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May 24, 2004

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**Via Electronic Filing**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth St., S.W.  
Washington, DC 20554

Re: **WT Docket No. 02-55**

Dear Ms. Dortch:

As Verizon Wireless (“Verizon”) has explained in previous filings, we have serious concerns about the legality of the Nextel “Consensus Plan.” We wish to supplement the record with additional arguments regarding the lawfulness of a private sale of spectrum to Nextel under the Administrative Procedure Act (“APA”). We believe that the proposed sale would amount to arbitrary and capricious agency action, for a number of reasons:

First, there is no rational way, apart from the standard auction process, for the Commission to estimate the value of the 1.9 GHz spectrum. Government analysts simply cannot determine the spectrum’s fair market value as accurately as the market itself can.

Second, there is no rational way for the Commission to grant Nextel “replacement” spectrum in exchange for paying public safety’s relocation costs, until the actual costs of rebanding are known. Indeed, granting Nextel valuable spectrum on day one with only a future contingency of *possible* payments to public safety, and without taking into account the basic time value of money, is inherently arbitrary and capricious: a contingent liability of unknown duration and amount is in no way equivalent to the grant of a valuable resource that can be used immediately to generate new services and revenues.

Third, offering “replacement” spectrum in exchange for Nextel’s agreement to eliminate interference would mark an abrupt departure from the Commission’s past precedent, under which entities that take advantage of newly granted spectrum pay to relocate the incumbent licensees, *see Teledesic LLC v. FCC*, 275 F.3d 75, 85-87 (D.C. Cir. 2001) (citing series of FCC decisions ordering party moving into vacated spectrum to pay the costs of relocating incumbents), and under which spectrum newcomers like Nextel must solve the interference problems they create, *see*

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*Midnight Sun Broadcasting Co.*, 3 R.R. 1751, 1752-53 (1947) (establishing “last in fixes it” policy) . The Commission cannot cast aside these longstanding precedents without adequate justification.

Fourth, to award Nextel a nationwide license to operate at 1.9 GHz would be to depart from the Commission’s standard practice of awarding licenses on a geographic market-by-market basis. Again, the Commission cannot cast aside this longstanding practice without adequate justification.

In conclusion, Verizon agrees with other participants in this proceeding that critical public-safety communications in the 800 MHz band must be protected from the harmful interference caused by Nextel’s operations in adjacent blocks of spectrum. But, again, the Commission should not seek to solve that problem by adopting a solution rife with legal risks.

Sincerely yours,

/s/

Helgi C. Walker